

APPEAL NO. 041068
FILED JUNE 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2004. The hearing officer decided that: (1) consistent with the parties' stipulation, the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, and eighth quarters; (2) the claimant is entitled to ninth quarter SIBs; (3) the appellant (carrier) is relieved from liability for ninth quarter SIBs for the period of December 23, 2003, through January 13, 2004, due to the claimant's failure to timely file an Application for [SIBs] (TWCC-52); (4) the claimant has not permanently lost entitlement to SIBs pursuant to Section 408.146(c); and (5) the claimant's average weekly wage is \$618.06. The carrier appeals the hearing officer's decision with regard to ninth quarter SIBs and permanent loss of entitlement, on sufficiency of the evidence grounds. The claimant did not file a response. The remaining determinations were not appealed and have become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to ninth quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue is whether the claimant's unemployment was a direct result of the impairment from the compensable injury, and whether the claimant had no ability to work during the ninth quarter qualifying period, thereby satisfying the good faith requirements of Section 408.142(a)(4) and Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the claimant has not permanently lost entitlement to SIBs under Section 408.146(c). The carrier's appeal on this issue is premised upon the success of its argument that the claimant is not entitled to ninth quarter SIBs. Given our affirmance above, we likewise affirm the hearing officer's determination that the claimant has not permanently lost entitlement to SIBs.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge